

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:07-710-HMH
vs.)	
)	
Terry Lemoire McCarrell,)	OPINION AND ORDER
)	
Movant.)	

This matter is before the court on Terry Lemoire McCarrell’s (“McCarrell”) motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. After a thorough review of the facts and pertinent law, the court construes McCarrell’s motion as a habeas petition pursuant to 28 U.S.C. § 2241 and transfers the petition to the Eastern District of Kentucky.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August, 21, 2007, McCarrell pled guilty to conspiracy to utter counterfeit securities. On December 6, 2007, McCarrell was sentenced to 15 months’ imprisonment. McCarrell did not appeal his conviction and sentence. McCarrell filed the instant § 2255 motion on May 8, 2008. In his § 2255 motion, McCarrell alleges that the Bureau of Prisons has erroneously failed to provide him credit for the time spent in custody from July 20, 2007, to December 19, 2007.

II. DISCUSSION OF THE LAW

Motions brought under § 2255 attack the *validity* of a conviction or sentence, while petitions under § 2241 attack the *execution* of a sentence. See In re Vial, 115 F.3d 1192, 1194 & n.5 (4th Cir. 1997); United States v. Miller, 871 F.2d 488, 490 (4th Cir. 1989) (holding that when a claim attacks the execution of the sentence rather than the sentence itself review is properly

sought under § 2241). McCarrell is attacking the execution of his sentence. Therefore, McCarrell's motion is properly construed as a petition under § 2241.

A petition filed pursuant to § 2241 is filed in the district of incarceration, while a § 2255 motion is filed in the district where the sentence was imposed. See 28 U.S.C. § 2255 (2006); Miller, 871 F.2d at 490. McCarrell is currently incarcerated at the Federal Correctional Institution in Ashland, Kentucky.

It is therefore

ORDERED that this case is transferred to the United States District Court for the Eastern District of Kentucky.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
May 28, 2008

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.